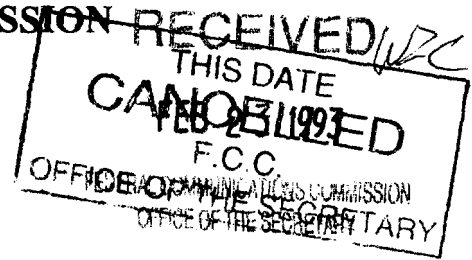


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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Policies and Rules Concerning
Children's Television Programming

Revision of Programming Policies
for Television Broadcast Stations

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MM Docket No. 93-48

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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SUMMARY

The Commission should not adopt specific standards or quantitative guidelines to implement the programming provisions of the Children's Television Act of 1990. In general, such standards and guidelines are unnecessary and premature. The Commission's specific proposals clearly contravene the intent of Congress that broadcasters have maximum flexibility and discretion in choosing programming to satisfy the requirements of the Act. Congress correctly believed that government-imposed tests and definitions would ultimately reduce the quality and quantity of programming responsive to children's needs.

Guidelines and Standards Are Unnecessary and Premature. NBC submits that guidelines and standards on children's educational programming are unnecessary, and that it is simply premature for the Commission to determine that licensee compliance with the Act is wanting and that more explicitly regulatory guidance is therefore necessary. As reflected in the legislative history, television licensees were furnishing educational programming for children -- like "Saved By The Bell" -- before the new law. Since the provisions of the Act went into effect, stations have increased their quotient of educational and informational

children's programming. For example, since September, 1992, NBC has offered its affiliates "Name Your Adventure," the first regularly scheduled network program specifically designed to respond to the requirements of the Act. NBC owned stations also added new syndicated and local educational children's programs, and continued to broadcast a variety of responsive short segment programs and PSAs. Looking to the future, many new network, syndicated and local children's educational and informational programs are planned for the 1993-94 season.

The Commission simply has not given the marketplace sufficient opportunity to work. The challenge is to develop educational programming that will captivate children, not to offer them "educational and informational" programs they will not watch. If stations and program producers are given a reasonable amount of time to meet that challenge, NBC is confident that amount and quality of educational children's programming will be more than sufficient to warrant renewal of license in the vast majority of cases.

Quantitative Guidelines. The quantitative guidelines proposed in the Notice would directly contradict the express intent of Congress, as well as the Commission's own findings and policies in this and other proceedings. Such guidelines become de facto performance ceilings, and impose rigidity and uniformity in a programming area where innovation and creativity should be encouraged. Children's programming is not the place to force broadcasters to be more concerned with quantity than with quality.

Over a decade ago, based on constitutional and policy considerations, the Commission eliminated quantitative guidelines for news and informational programming. It should not retreat from that policy now. Moreover, since the Act contemplates that licensees will take the programming of other stations in their markets into account when deciding how much and what kind of programming responds to children's needs, quantitative guidelines in this area would be virtually

definition of "core" programming that would qualify as "educational and informational." Congress never once used the word "core" or alluded to "primary objective" or "explicit purpose" when describing the type of programs that would qualify. Instead, Congress expressly stated that the Commission should consider a licensee's overall programming at renewal time, and that any program that in fact serves children's educational and informational needs would qualify. The standard the Commission now proposes would create a terrible false dichotomy -- that is, that programs that entertain cannot be educational -- and would eliminate from consideration many programs cited with approval by Congress, such as NBC's "Saved By The Bell," which, in the course of entertaining teens presents important pro-social themes and informational material that serve their educational and informational needs.

Any definition that excludes programs like "Saved By The Bell" simply because one of its goals is to entertain is unjustified and counterproductive. Television programs are developed and produced with many different purposes (one of which is almost always to entertain), and it would be foolish if not impossible for the Commission to try to determine which

is the "primary" one.

Short Segment Programming. NBC also objects to the Commission's proposal to relegate short segment programs to secondary importance. Again, this proposal contravenes express Congressional intent. And while licensees should not rely exclusively on short programs, they play an important role in informing and educating children. Vignettes, PSAs and short segments are extremely effective programming vehicles for teaching and informing children, and can be inserted within or adjacent to programs that are popular among child viewers. To deny short segments full credit may deprive children of the most compelling and effective type of educational programming.

The issuance of this Notice of Inquiry and expressions of concern by some Members of Congress have highlighted the critical importance of program service to children. The outcome of this Inquiry should be a reaffirmation by the Commission of licensee obligations in this area. However, the Commission should reject the notion of industry-wide standards and/or quantitative guidelines.

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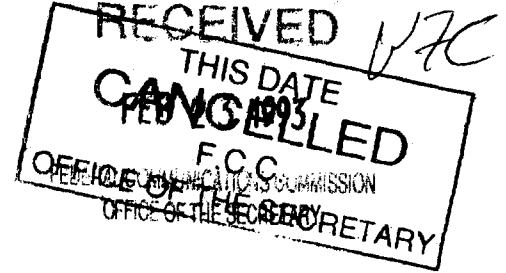
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COMMENTS OF NATIONAL
BROADCASTING COMPANY, INC.

National Broadcasting Company, Inc. ("NBC"), by its attorneys, files these Comments in response to the Notice of Inquiry ("Notice") in the above-captioned proceeding.

I. INTRODUCTION

NBC appreciates the Commission's desire to give licensees guidance on the level and nature of service required to fulfill the programming obligations of the Children's Television Act of 1990 (the "Act"). However, we respectfully

submit that it would be a mistake for the Commission to adopt specific standards or quantitative processing guidelines. Congress clearly and expressly intended the Commission to defer to licensee judgments as to the amount and type of programming that would satisfy the programming requirements of the Act. In addition to First Amendment considerations, Congress believed that the more flexibility broadcasters had in this area, the more creative and responsive children's programming would be. Government-imposed quantitative guidelines quickly become performance ceilings. Government-imposed definitions result in uniformity and mediocrity.

Moreover, it is simply premature for the Commission to determine that licensees are not fulfilling their programming obligations under the Act and therefore need more explicit regulatory guidance. The proposals in the Notice appear to be an overreaction to an admittedly limited analysis of some licensees' performance in the one year period after the children's programming obligations went into effect. NBC does not believe that this analysis accurately reflects the commitment of broadcast licensees to fulfill their obligations under the Act.

Even before the new law, many licensees were offering programs that serve children's educational and informational needs, such as NBC's "Saved By The Bell," which was acclaimed by both Congress and the FCC for its responsiveness to the concerns and needs of teen viewers. Since the Commission's regulations went into effect, stations have increased the amount of programming specifically designed to serve the educational and informational needs of children. For example, NBC's owned stations added the syndicated news magazine "K-TV" and locally-produced "News 4 Kids" to their schedules. Beginning in September, 1992, NBC was the first network to offer its affiliates a regularly scheduled program specifically designed to respond to the requirements of the Act: "Name Your Adventure." NBC's stations also broadcast a

side activity of school, and at the same time, encourage the

cases. The issuance of the Notice, coupled with expressions of concern by Members of Congress, has reaffirmed to licensees the critical importance of their children's programming service to the Commission's deliberations at renewal time. The Commission can use the opportunity of this Inquiry to issue a statement reiterating the importance of educational/informational programming for children in the license renewal process. But it should refrain from adopting across-the-board programming standards or guidelines.

In these Comments NBC will first explain why it would be wrong to adopt specific standards and processing guidelines to implement the programming obligations of the Act, and then will discuss the specific proposals contained in the Notice.

II. THE COMMISSION SHOULD NOT ADOPT STANDARDS OR GUIDELINES TO SPECIFY THE LEVELS AND TYPES OF CHILDREN'S PROGRAMMING LICENSEES MUST PRESENT TO SATISFY LICENSE RENEWAL REQUIREMENTS

Section 4 of the Children's Television Act of 1990 requires a television licensee, as a condition of license renewal, to demonstrate that it "has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." In response to constitutional concerns that inevitably are raised by government action that so directly affects program content, Congress deliberately crafted a narrowly tailored provision that affords broadcasters broad discretion and flexibility in determining the amount and type of programming that would satisfy the statutory requirement. Both the House and Senate Reports¹ accompanying the legislation state that the requirement

¹ Children's Television Act of 1990, House Committee on Energy and Commerce, H.R. Rep. No. 385, 101st Cong. 1st Sess 16 (1989) ("House Report"); Children's Television Act of 1990, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess 22 (1989) ("Senate Report").

does not exclude any programming that does in fact serve the educational and informational needs of children; rather the broadcaster has discretion to meet its public service obligation in the way it deems best suited (House Report at 12; Senate Report at 17)

During floor debate on the legislation, Senator Inouye, its principal sponsor, said the following with respect to the new programming obligations:

We have left to the licensee the greatest possible flexibility in how it discharges its public service obligation to children. We recognize that there is a great variety of ways to serve this unique audience... The list can be extended as far as the imagination of the creative broadcaster and must rely on the good faith, dedicated judgment of the broadcaster.

The mix is left to the discretion of the broadcaster, taking into account what other stations, including non-commercial ones, are doing in this important area.²

When the Commission adopted regulations to implement the Act,³ it took great pains to reflect the stated intent of

² 136 Cong. Rec. S10121-10022 (daily ed. July 19, 1990).

³ Report and Order in MM Docket 90-570, 6 FCC Rcd 2111 (1991) (hereinafter "Children's Report and Order"), reconsideration granted in part, 6 FCC Rcd 5095 (1991) (hereinafter "Reconsideration Order").

the Congress. Referring repeatedly to Congressional desire as expressed in the legislative history, the Commission avoided any regulation that would constrict licensee discretion, whether in terms of the definition of "educational and informational," the scheduling of programs designed to satisfy the new requirements, or the amount of programming furnished by a licensee. But less than 18 months after the effective date of the Commission's rules, and based on only a year of compliance with the Act as reflected in renewal applications filed by a fraction of the nation's television licensees, this Inquiry proposes a "refinement" of the Commission's implementation of the Act which would be, in reality, a dramatic change of course.

Based on an "informal comparison" between the children's programming listed in recently filed renewal applications and Congressional findings prior to the enactment of the Act, the Notice appears to have concluded that during the one-year period the new programming requirements had been in effect there had been "little change" in the available

programming that addresses children's needs.⁴ Citing the belief that the level of performance evidenced by this "informal" review was not consistent with the objectives underlying the Act, the Notice concludes that licensees would benefit from "palpable performance standards" and further definition of the Act's requirements in the programming area.⁵

NBC believes the Commission should not adopt the proposed or any other standards or guidelines for a number of reasons:

⁴ In the Notice, the Commission stated that the amount of standard-length programming aired by licensees was, in some cases, "very limited," and some licensees were placing substantial reliance on short segment programs and public service announcements. It also noted that some licensees were proffering animated programs like "The Flintstones" and "GI Joe" as educational and informational because of the "generalized pro-social themes" they contain. The Notice does not indicate what proportion of the 320 applications reviewed by the Commission were characterized by these "problems." Nor is it clear whether the licensees that proffered programs like "The Flintstones" relied on such programs exclusively, or also listed other educational and informational programs in their applications.

⁵ Notice at pars. 6-7. Specifically, the Commission proposes to adopt a definition specifying the type of programming that qualifies as "core" educational/informational programming, and to adopt processing guidelines specifying the amount and type of programming that would permit the Commission's staff to grant a license renewal application without further review.

First, standards and guidelines specifying the amount and type of children's programs that would ensure license renewal would severely restrict the flexibility and discretion Congress intended broadcasters to have.

As noted above, Congress was concerned about the constitutional ramifications of heavy-handed content regulation, but believed deference to licensee discretion helped to mitigate these concerns. Congress also realized that individual licensees are better suited than the government to determine the educational and informational needs of children in their markets and how best to serve them. That is why the statutory language specifically states that the Commission must consider a licensee's overall programming to determine whether children's educational and informational needs have been served. That is why Congress left to individual licensees the task of identifying the informational and educational needs of children in their communities, and determining the amount and type of programming that would be responsive to those needs, taking into account other programming available in the marketplace.

Second, the proposed standards and guidelines are unnecessary or, at best, premature.

In an area as sensitive as program content, the Commission should not restrict licensee discretion absent clear and compelling evidence that broadcasters are not meeting their public interest obligations. Since Congress clearly intended for each licensee to determine the type and amount of programming that would best serve the needs of children in its community, it is difficult to understand how the Commission can decide, based on its review of a limited number of renewal applications, that station performance across the country is generally wanting, and that there is a general need for across-the-board guidelines and standards. The Commission lacks sufficient evidence to conclude that there is widespread non-compliance with the Act or that broadcasters are not meeting their obligation to children.⁶

Third, broadcasters have been and are increasingly

confronted with the new communication techniques imposed by the

blends humor, adventure and positive social messages. The show began as a half-hour and then, in response to its popularity with the teen audience, was expanded to an hour in 1991. "Saved By The Bell" was expressly recognized by both Congress and the Commission as a program whose treatment of "topical problems and conflicts faced by teens" serves the educational and informational needs of this segment of the child audience.⁹ In fact, since the Fall, 1992, NBC's entire Saturday children's programming block has been targeted to the teen audience -- a segment which is not typically specifically served by other broadcast programs.

In late 1991, coincident with the effective date of the new children's programming requirements, NBC owned stations also began airing "K-TV," a half-hour syndicated program specifically designed for school age children that

⁹ Children's Report and Order, 6 FCC Rcd at 2115. The Notice seems to find fault with licensees who are meeting the Act's requirements with programs mentioned in the legislative history (Notice at par 6). Surely a licensee should not be penalized because it was offering children an educational program that was good enough to receive Congressional commendation before it was required to do so by law, and continued to offer that same quality program after the Act was passed!

explored a variety of issues of importance to them through live interviews, performances and child participation. The program treated such topics as cultural diversity, science and art appreciation. In the fall of 1992, NBC owned stations replaced "K-TV" with "News 4 Kids," a weekly half-hour program locally produced by KCNC-TV, NBC's owned station in Denver, Colorado. "News 4 Kids" is designed for children ages 8 to 14 and focuses on current events, science, education, books and other educational topics.

In addition, in the fall of 1992, again in direct

response to the requirements of the Act, the NBC stations

government, the beauty of the arts and music, the uniqueness of nature, the achievement of personal goals, and the contributions of various individuals to American life. The series also tries to integrate into the content social messages related to the value of education, the importance of teamwork, the value of self-discipline and self-esteem, and the value of a healthy mind and body. During the 1992-93 season, the adventures have included a visit to an Oregon rainforest, dancing with the Joffrey Ballet, experiencing a day with Senators John Kerry and John Danforth and learning about how an environmental recycling center works. Descriptions of the segments contained in the "Name Your Adventure" episodes broadcast during its first season are attached as Exhibit A.

"Name Your Adventure" has been praised by educators and others concerned with children's television as a show that has significant educational value. In its first season it was awarded the Silver Apple Award by the National Educational Film and Video Festival in the category of TV/Broadcast: Children's News/Magazine Shows.

In addition to its success as an educational/informational vehicle, "Name Your Adventure" has become a ratings success, and has been renewed by the NBC

Network for the 1993-94 season. Dr. Gordon Berry, a noted educator and expert in television and children, has become a consultant to the show.¹⁰

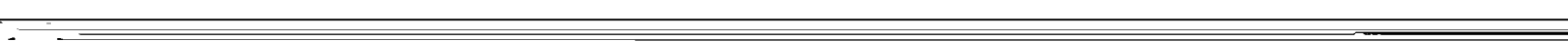




In addition to these standard length programs, all but one of which were offered in direct response to the Act, NBC's owned stations broadcast short segment programming that serves the educational and informational needs of children. For example, regular segments of some station newscasts are directed to children and include "youth reports" on items of interest to the young audience, study segments that include classroom curriculum, and profiles of high school students who excel in various scholastic and community endeavors. All NBC owned stations run a generous schedule of public service announcements specifically directed at the child and teen audience, including locally-produced spots and the "The More You Know" campaign, which is furnished to all affiliates by the NBC Network. "The More You Know" is a Peabody

¹⁰ Dr. Berry is a Professor of Educational Psychology and Communications Studies at UCLA who has authored numerous books, articles and classroom guides on the subject of television and the socialization of children.

award-winning community-action campaign that focuses attention on the issues affecting education in the U.S. Over 150 PSAs have been produced and distributed to NBC affiliates dealing with issues ranging from substance abuse and violence prevention, to peer pressure and teacher appreciation.

If the actions of NBC and its owned stations are any indication, in the few months since the programming obligations of the Act have become effective, licensees have responded to these requirements with existing and new educational and informational programming for children.

Fourth, the amount of standard length programming specifically designed to serve children's informational and



Fox).¹¹ NBC will continue to offer affiliates "Saved By The Bell" and "Name Your Adventure," among others.¹²

According to distributors, there are 25 new educational syndicated programs being offered in response to the increased demand for educational and informational programs for children.¹³ These include "Nick News," "Kids of Courage," "Pick Your Brain," "Mad Scientists Toon Clubtoon of the Week," "The Edison Twins" and an untitled program from Disney. Several educational children's programs currently in syndication ("Scratch," "Not Just the News" and "Real News for Kids") are likely to return next season.¹⁴ Channel America, a

¹¹ ABC will also continue its "ABC Weekend Specials" and CBS its "CBS Storybreak," both of which address children's educational needs. ABC has announced it plans to broadcast another program featuring children and President Clinton, as well as several news specials directed at children. Broadcasting, April 19, 1993, p. 10.

¹² For example, since September, 1992, NBC has also offered affiliates another program directed to teens called "California Dreams." Like "Saved By The Bell," this program

network of about 80 low and full power television stations, will offer its affiliates a two-hour educational children's program block beginning at the end of May, 1993.¹⁵ No doubt many stations will be broadcasting existing and new locally-produced educational and informational programs for children which have not received trade press attention.

NBC is aware that some broadcasters have been criticized for the amount and type of programs they initially reported as responsive to the requirements of the Act, and that individual Members of Congress and other public officials have expressed concern that the objectives of the Act are not being realized. But the Commission must allow broadcasters sufficient time to create the demand for educational and informational programming before it concludes that licensees' level of service is not meeting the intent of the Act. It must give producers and suppliers time to develop programs that can be successful in terms of both the Act's goals and in terms of the marketplace. Stations should be encouraged to experiment with innovative approaches to programming that may

¹⁵ Electronic Media, April 19, 1993.